

SETTLEMENT AGREEMENT

The Wyoming Department of Environmental Quality, Air Quality Division ("DEQ/AQD"), Herschler Building, 122 West 25th Street, Cheyenne, WY 82002, and Frost Construction Company, a Wyoming corporation ("Frost"), P.O. Box 457, Lovell, WY 82431 enter into this Settlement Agreement ("Agreement") to fully and finally resolve without litigation the violations cited in DEQ Notice of Violation Docket No. 3984-06 ("NOV"). The NOV alleges that Frost failed to limit the opacity of visible emissions from the crushing and screening system equipment ("Equipment") at the Mountain Pit #1 facility ("Facility") located in Bighorn County, Wyoming, resulting in visible emissions in excess of that allowed by the Wyoming Environmental Quality Act ("Act") and the applicable Wyoming Air Quality Standards and Regulations ("WAQSR").

WYO. STAT. ANN. § 35-11-901(a)(ii) (LexisNexis 2005) authorizes stipulated settlement, including payment of a penalty, in lieu of litigation. To that end, Frost and the DEQ/AQD hereby stipulate and agree as follows:

1. The DEQ/AQD is responsible for enforcing the Act and the WAQSR.
2. WYO. STAT. ANN. § 35-11-201 states, "No person shall cause, threaten or allow the discharge or emission of any air contaminant in any form so as to cause pollution which violates rules, regulations and standards adopted by the council."
3. Chapter 3, section 2(a) of the WAQSR limits the opacity of visible emissions from any new source to twenty percent (20%).
4. On August 22, 2006, DEQ/AQD Inspector Mr. Greg Meeker inspected the Facility and conducted a Method 9 opacity observation on the Equipment with a resultant opacity of seventy-nine percent (79%).
5. Based on the results of DEQ/AQD's inspection, the DEQ/AQD determined that Frost violated the Act and WAQSR and issued the NOV to Frost for failing to limit the opacity of visible emissions from the Equipment at the Facility to twenty percent (20%).
6. DEQ/AQD and Frost agree that Frost will pay the DEQ/AQD two thousand five hundred dollars and no cents (\$2,500.00) as a stipulated cash settlement to resolve this alleged violation in lieu of litigation pursuant to WYO. STAT. ANN. § 35-11-901(a)(ii). Frost shall make full payment by check, made payable to the Wyoming DEQ/AQD, within thirty days after Frost has been notified by DEQ/AQD that the final signature has been affixed to this Agreement. Frost shall mail the payment to Nancy Vehr, Sr. Asst. Attorney General, 123 Capitol Building, Cheyenne, WY 82002

7. Frost, by entering into this Agreement, does not concede or admit to any liability, and this Agreement constitutes no admission of fault.

8. Full compliance with this signed Agreement shall constitute full satisfaction for all claims by the DEQ/AQD against Frost based on NOV Docket No. 3984-06 and solely in reliance on this Agreement the DEQ/AQD will refrain from taking further enforcement action against Frost for this particular violation.

9. Frost waives any statute of limitations which may apply to an enforcement action by the DEQ/AQD involving the specific matters described in NOV Docket No. 3984-06 in the event that Frost fails to fulfill its obligations under this Agreement.

10. This Agreement shall be admissible by either Frost or DEQ/AQD (hereinafter Frost and DEQ/AQD may be referred to individually as "Party" and collectively as "Parties") without objection by the other Party in any action between these Parties relating to the violations alleged herein; provided, however, that nothing herein constitutes an admission by Frost of liability or fault.

11. Neither Party hereto shall have any claim against the other for attorneys' fees or other costs incurred relating to the allegations resolved hereby, including costs incurred in the preparation of this Agreement. Each Party shall bear its own attorney fees and costs, if any, incurred through the date this Agreement is signed by both Parties. Each Party assumes the risk of any liability arising from its own conduct. Neither Party agrees to insure, defend or indemnify the other.

12. Any changes, modifications, revisions or amendments to this Agreement which are mutually agreed upon by the Parties shall be incorporated by written instrument, executed and signed by all Parties to this Agreement.

13. The construction, interpretation and enforcement of this Agreement shall be governed by the laws of the State of Wyoming. The Courts of the State of Wyoming shall have jurisdiction over this Agreement and the Parties, and the venue shall be the First Judicial District, Laramie County, Wyoming.

14. This Agreement, consisting of three (3) pages represents the entire and integrated agreement between the Parties and supersedes all prior negotiations, representations, and agreements, whether written or oral.

15. The State of Wyoming and the DEQ/AQD do not waive sovereign immunity by entering into this Agreement and specifically retain immunity and all defenses available to them as sovereigns pursuant to WYO. STAT. ANN. § 1-39-104(a) and all other state law.

16. The Parties do not intend to create in any other individual or entity the status of third party beneficiary, and this Agreement shall not be construed so as to create such status. The rights, duties and obligations contained in this Agreement shall operate only between the Parties to this Agreement, and shall inure solely to the benefit of the Parties to this Agreement. The Parties to this Agreement intend and expressly agree that only Parties signatory to this Agreement shall have any legal or equitable right to seek to enforce this Agreement, to seek any remedy arising out of a Party's performance or failure to perform any term or condition of this Agreement, or to bring an action for the breach of this Agreement.

17. Each Party represents that they are authorized to enter into this Agreement and agree to be bound hereby. This Agreement shall become binding upon the Parties once executed by all Parties.

IN WITNESS THEREOF, the Parties, by their duly authorized representatives, have executed this Agreement on the days and dates set out below, and certify that they have read, understood, and agreed to the terms and conditions of this Agreement:

FROST CONSTRUCTION COMPANY:

By: James M. Frost 02/21/07
James M. Frost, President Date

STATE OF WYOMING, DEPARTMENT OF ENVIRONMENTAL QUALITY

By: David A. Finley 3/1/07
David A. Finley, AQD Administrator Date

By: John V. Corra 3/2/07
John Corra, DEQ Director Date

APPROVAL AS TO FORM:

Nancy E. Vehr 2/16/07
Nancy E. Vehr, Sr. Asst. Attorney General Date
Attorney for DEQ/AQD